

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL FOSTER,

Petitioner,

v.

JASON BUNTING,
Warden,

Respondent.

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CASE NO. 1:12 CV 2030

JUDGE DONALD C. NUGENT

ORDER ADOPTING
MAGISTRATE'S REPORT AND
RECOMMENDATION

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Vernellis K. Armstrong. The Report and Recommendation (ECF # 17), issued on July 24, 2013, is hereby ADOPTED by this Court. Petitioner filed this action requesting a writ of habeus corpus pursuant to 28 U.S.C. §2254, challenging the constitutionality of his convictions of aggravated robbery, aggravated murder, felonious assault, possessing criminal tools, receiving stolen property, kidnapping, and being a felon in possession of a firearm with firearm, prior conviction, and repeat violent offender specifications. The Respondent filed a Motion to Dismiss the Petition, (ECF #8).

The Magistrate Judge recommends that the Petitioner's fourth, fifth, sixth, and seventh

claims be denied because they are without merit. The Magistrate Judge further recommends that Petitioner's first, second, and third claims be denied because they were not exhausted at the state level and are, therefore, procedurally defaulted. The Petitioner has not filed any objections to the Report and Recommendation.

The Court has reviewed *de novo* the Report and Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS it in its entirety. The petition is, therefore, denied, and the case is dismissed. Further, for the reasons stated in the Magistrate Judge's Report and Recommendation, a reasonable jurist could not conclude that dismissal of the Petition is in error or that Petitioner should be permitted to proceed further. Accordingly, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b). IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: September 19, 2013